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In re Application of GARCON et al. :
Application No.: 10/560,513 : DECISION ON PETITION
Int. Filing Date: 14 June 2004 :
Attorney Docket No.: VB60298 :
For: POLYANIONIC POLYMER ADJUVANTS: :
FOR HAEMOPHILUS INFLUENZA B :
SACCHARIDE VACCINES : :

This is a decision on applicant's "Petition to Accept an Unintentionally Delayed Claim for the Benefit of a Prior-Filed Application", filed 26 May 2010, to accept a claim for foreign priority to United Kingdom application 0313916.9.

For reasons below, the petition is DISMISSED AS MOOT.

Applicant states that the specification for the above referenced application does not recite the claim of priority to the United Kingdom priority application. Applicant submits the instant petition in an "abundance of caution" in the event that a petition is required.

MPEP 1893.03(c) states, in relevant part,:

Pursuant to 35 U.S.C. 365(b) a U.S. national stage application shall be entitled to a right of priority based on a prior foreign application or international application designating at least one country other than the United States in accordance with the conditions and requirements of 35 U.S.C. 119(a) and the treaty and the PCT regulations. See in particular PCT Article 8 and PCT Rules 4.10 and 26bis. To obtain priority in the U.S. national stage application to such applications, the priority must have been timely claimed in the international stage of the international application. See 37 CFR 1.55(a)(1)(ii). If the priority was properly claimed in the international stage of the international application, the claim for priority is acknowledged and the national stage application file is checked to see if the file contains a copy of the certified copy of the priority document submitted to the International Bureau.

In the present case, the priority claim to United Kingdom application 0313916.9 was timely made in international stage of the international application PCT/EP04/06426. Applicant requested national stage entry of PCT/EP04/06426 on 13 December 2005. A certified copy of the priority document provided by the International Bureau is found in the U.S. national stage application file. Thus, 10/560,513, i.e., the national stage of PCT/EP04/06426, is entitled to a right of priority based on United Kingdom application 0313916.9 without the need for a petition. Applicant should note that there is no requirement that a foreign priority claim be made in the specification. See 37 CFR 1.55(a).

Accordingly, the petition is **DISMISSED AS MOOT**.

The petition fee of \$1410 will be refunded to applicant's deposit account.

Any questions concerning this matter may be directed to Cynthia Kratz at (571) 272-3286.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Boris Milef/

Boris Milef
PCT Legal Examiner
Office of PCT Legal Administration